

## Article 9: Construction Permits

### Division 7: Public Right-of-Way Permits

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

#### §129.0701 Purpose of Public Right-of-Way Permit Procedures

The purpose of these procedures is to establish the process for review of Public Right-of-Way Permit applications for compliance with the regulations set forth in Chapter 5, Article 4 and Chapter 6, Article 2 and to protect the public health, safety, and welfare.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

#### §129.0702 When a Public Right-of-Way Permit Is Required

(a) A Public Right-of-Way Permit is required for the following unless otherwise exempt under Section 129.0703:

- (1) The private construction of *public improvements*;
- (2) The construction of privately owned *structures* or facilities in the *public right-of-way*;
- (3) Any construction activity within a *public right-of-way* as required by Municipal Code Sections 54.0116 and 54.0117;
- (4) The planting of any tree, shrub, or plant greater than 30 inches in height in the *public right-of-way*; where not otherwise covered by a Street Tree Permit per Chapter 6, Article 2, Division 6 (Street Planting).

(b) The City Manager may waive the requirement for a Public Right-of-Way Permit as provided in the Land Development Manual.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

#### §129.0703 Exemptions from Requirement for a Public Right-of-Way Permit

Exemption from the Public Right-of-Way permit requirements does not authorize any work to be done in violation of the provisions of the *public right-of-way* regulations or other applicable local or state regulations. A Public Right-of-Way Permit is not required for the following work:

- (a) The installation of underground irrigation systems in the *parkway* that will be maintained by the fronting property owner; and

- (b) The installation of landscape in the *parkway* that is less than 30 inches high and will be maintained by the fronting property owner or where otherwise covered by a Street Tree Permit per Chapter 6, Article 2, Division 6 (Street Planting).

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

#### §129.0710 How to Apply for a Public Right-of-Way Permit

An application for a Public Right-of-Way Permit shall be submitted in accordance with Sections 112.0102 and 129.0105. The submittal requirements for Public Right-of-Way Permits are listed in the Land Development Manual. A *development permit* or other discretionary approval is required prior to issuance of a Public Right-of-Way Permit for the following:

- (a) If the proposed *encroachment* involves construction of a privately owned *structure* or facility into the *public right-of-way* dedicated for a *street* or an *alley*, and where the *applicant* is the *record owner* of the underlying fee title, a Neighborhood Development Permit is required in accordance with Section 126.0402 (j) except for the following:
  - (1) Private *hardscape* improvements in the *public right-of-way* including ramps required to accommodate required access for *disabled persons*;
  - (2) Fences or walls that meet the following criteria:
    - (A) There is no present use for the subject *public right-of-way*;
    - (B) The proposed *encroachment* is consistent with the underlying zone, city standards, and policies;
    - (C) The proposed *encroachment* shall be 3 feet or less in height.
  - (3) The *encroachment* is permitted under Chapter 6, Article 2, Division 11 (Utilities) or as a private underground utility service to the *applicant's* property.
  - (4) The *encroachment* is permitted under Section 141.0619(b) (Pushcarts).
  - (5) The *encroachment* is permitted under Chapter 6, Article 2, Division 10 (Newsracks).
  - (6) The *encroachment* is permitted under Section 141.0621 (Sidewalk Cafes).
  - (7) Temporary monitoring wells in the *public right-of-way*.

- (b) If the proposed *encroachment* is erected, placed, constructed, established or maintained in the *public right-of-way* when the applicant is not the *record owner* of the property on which the *encroachment* will be located, a Site Development Permit is required in accordance with Section 126.0502(d)(7), except for the following:
  - (1) *Encroachments* listed in Section 129.0710(a)(4) through (7)
  - (2) Underground utility connections to a public main shall require a Neighborhood Development Permit in accordance with Section 126.0402(j).
- (c) If the proposed *encroachment* includes underground or overhead structures which extend into the *public right-of-way* farther than the ultimate curb line, or other *encroachments* which, in the opinion of the City Manager, are of sufficient public interest to warrant City Council approval, the item shall be scheduled for early consideration by the City Council in accordance with Council Policy 600-16, prior to the issuance of a Public Right-of-Way Permit.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

(Amended 11-13-08 by O-19803 N.S.; effective 12-13-2008.)

**[Editors Note.** Amendments as adopted by O-19803 N. S. will not apply within the Coastal Overlay Zone until the California Coastal Commission unconditionally certifies it as a Local Coastal Program Amendment.]

## §129.0715 Encroachment Maintenance and Removal Agreement

- (a) An Encroachment Maintenance and Removal Agreement is required for any privately owned facilities or *structures* in the *public right-of-way* constructed and maintained by the property owner subject to the following:
  - (1) The *encroachment* shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successors in interest and shall not adversely affect the public's health, safety or general welfare.
  - (2) The property owner shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney.
  - (3) The property owner must agree to remove or relocate the *encroachment* within 30 days after notice by the City Engineer or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land, or the property owner agrees to an equivalent to the requirement for removal as determined by the City Engineer.

- (4) For *structures* encroaching over or under the *public right-of-way*, the property owner agrees to provide an alternate *right-of-way* or to relocate any existing or proposed City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Engineer that any existing or proposed City facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching *structure*.
- (5) Whatever rights and obligations were acquired by the City with respect to the *rights-of-way* shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroaching *structure*.
- (6) Except as provided in Section 129.0715(a)(7), the property owner shall maintain a policy of \$1 million liability insurance, satisfactory to the City Engineer, to protect the City from any potential claims which may arise from the *encroachment*.
- (7) The property owner of an *encroachment* serving a *single dwelling unit* shall maintain a policy of \$500,000 liability insurance, for *encroachments* serving a *single dwelling unit* satisfactory to the City Engineer to protect the City from any potential claims which may arise from the *encroachments*.
- (8) In the event the City is required to place, replace, or maintain a *public improvement* over which the property owner has constructed an encroaching *structure*, the property owner shall pay the City that portion of the cost of placement, replacement, or maintenance caused by the construction, or existence of the owner's permanent encroaching *structure*.
- (9) The property owner shall pay the City for all the cost of placing, replacing, or maintaining a *public improvement* within a *public right-of-way* when the City's facility has failed as a result of the construction or existence of the owner's encroaching *structure*.
- (10) The costs of placing, replacing, or maintaining the *public improvement* shall include the cost of obtaining a necessary alternate easement.
- (11) The property owner shall pay the City or public utility for all cost of relocating, replacing, or protecting a facility within the *public right-of-way* when such relocation, replacement, or protection results from the construction of the *encroachment*.
- (12) Encroachment Maintenance and Removal Agreements for approved *encroachments* shall be recorded in the office of the County Recorder.

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

**§129.0720 Qualifications to Prepare Plans and Perform Construction Work in the Public Right-of-Way**

The preparation of plans for, and the construction of, work regulated by this division shall only be performed by persons with the following qualifications:

- (a) Public Improvement Plans required for work authorized under this division shall be prepared by a civil engineer licensed by the State of California;
- (b) *Geotechnical reports* required for work authorized under this division shall be prepared by professionals as licensed and allowed by the California Business and Professions Code and as specified in Land Development Manual;
- (c) Drainage reports required for work authorized under this division shall be prepared by a civil engineer licensed by the State of California;
- (d) *Grading* plans required by this division shall be prepared by professionals as licensed and allowed by the California Business and Professions Code;
- (e) Landscaping plans for revegetation or planting in *public rights-of-way* required for work authorized under this division shall be prepared by a landscape architect or other professional as licensed and authorized by the California Business and Professions Code; and
- (f) All construction work required by this division shall be performed by a contractor licensed by the State of California except that any person owning property that is or will be that person's primary residence may perform *grading* on that property and any construction work authorized by a Public Right-of-Way Permit as a result of application by a *public utility* may be performed by the *public utility*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§129.0730 Decision Process for Public Right-of-Way Permits**

A decision on an application for a Public Right-of-Way Permit shall be made in accordance with Process One. A Public Right-of-Way Permit shall be approved if the proposed work is consistent with the Municipal Code, applicable *development* standards, and any *development permits* approved for that project.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§129.0731 Timeliness of Decision**

For a Public Right of Way Permit required by Chapter 14, Article 2, Division 12, a decision to approve or deny the permit shall be made no more than forty-five *business days* after the date on which the application is *deemed complete*. When a decision is not made within the required time, and the *applicant* does not waive time, the application shall be deemed denied. The timeliness requirement may be waived by the *applicant*.

(“Timeliness of Decision” added 1-13-2004 by O-19253 N.S.)

(Amended 2-14-2005 by O-19356 N.S.)

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**129.0732 Judicial Review**

For a Public Right of Way Permit required by Chapter 14, Article 2, Division 12, an *applicant* may seek judicial review of a final decision on the permit application, pursuant to California Code of Civil Procedure section 1094.8. This provision does not limit an *applicant's* ability to seek judicial review by other means.  
(“Judicial Review” added 1-13-2004 by O-19253 N.S.)

**§129.0741 Issuance of a Public Right-of-Way Permit**

- (a) A Public Right-of-Way Permit may be issued after the construction plans have been approved by the City Engineer, the prescribed fees have been paid, the required insurance has been guaranteed, and the required bond has been posted.
- (b) A Public Right-of-Way Permit shall not be issued for a *development* that requires a *development permit* until the *development permit* has been issued.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§129.0742 Commencement of Work Within a Public Right-of-Way**

- (a) The *applicant* shall not begin any work, construction, or use within the *public right-of-way* that will be authorized by a Public Right-of-Way Permit until the required permit has been issued.
- (b) Work within the *public right-of-way* shall be performed only during the dates and hours specified in the permit or on the approved traffic control plans.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§129.0743 Initial Utilization of a Public Right-of-Way Permit**

A Public Right-of-Way Permit shall become void if the work authorized by the permit has not begun within 180 calendar days of the date of permit issuance.  
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§129.0744 Maintaining Utilization of a Public Right-of-Way Permit**

A Public Right-of-Way Permit shall become void if, at any time after the work has begun, the work authorized by the permit is suspended or abandoned for a period of 180 calendar days.  
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

**§129.0750 Expiration of a Public Right-of-Way Permit**

- (a) A Public Right-of-Way Permit shall expire by limitation and become void 24 months after the date of permit issuance, unless an exception is granted in one of the following ways:
  - (1) At the time of permit issuance, the City Manager may approve an expiration date exceeding 24 months if the permittee can demonstrate that the complexity or size of the project makes completion of the project within 24 months unreasonable. The expiration date for the Public Right-of-Way Permit shall be specified on the permit; or
  - (2) A Public Right-of-Way Permit issued as part of a *subdivision* improvement agreement shall expire in accordance with the terms of that agreement.
- (b) If the work authorized by a Public Right-of-Way Permit has not received final inspection approval by the permit expiration date, all work shall stop until a new permit is issued.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§129.0751 Extension of Time for a Public Right-of-Way Permit**

The expiration date for a Public Right-of-Way Permit may be extended as follows:

- (a) An application for an extension of time shall be filed with the City Manager before, but no earlier than 60 calendar days before, the permit expiration date. The City Manager may extend the Public Right-of-Way Permit for a period not exceeding 180 calendar days if the City Manager determines that circumstances beyond the control of the permittee prevented completion of the work. A Public Right-of-Way Permit shall not be extended more than once except as provided in Section 129.0751(d).
- (b) If an application for an extension of time has been submitted by the expiration date, and in accordance with this section, the existing Public Right-of-Way Permit shall automatically be extended until the City Manager has made a decision on the application for an extension.
- (c) If a Public Right-of-Way Permit expires before an application is submitted for an extension of time, an extension shall not be granted. To proceed with the same *development*, a new application is required and the application shall be treated as a new application.
- (d) If an extension of time has been previously approved in accordance with Section 129.0751(a), the City Manager may extend the expiration of a Public Right-of-Way Permit one additional time if the City Manager finds the following:

- (1) There has not been a significant change in the regulations applicable to the site since the date of permit issuance;
- (2) The additional extension is in the public interest; and
- (3) Circumstances beyond the control of the *applicant* prevented the authorized work from proceeding.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§129.0752 Construction Change to a Public Right-of-Way Permit**

- (a) A proposed construction change to a Public Right-of-Way Permit must be approved before the commencement of the construction change. A decision on a construction change shall be made in accordance with Section 129.0730.
- (b) A proposed construction change to a Public Right-of-Way Permit that was approved in conjunction with another permit or map may be approved only if the proposed change is in *substantial conformance* with the other approved permit or map. If the proposed change is not in *substantial conformance* with the other approved permit or map, the other permit or map must be amended before consideration of the construction change.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§129.0760 Inspection of Work in the Public Right-of-Way**

All work in the *public right-of-way* that is authorized by a Public Right-of-Way Permit shall be inspected by the City Engineer in accordance with Section 129.0111 and the inspection requirements of the Land Development Manual. Professional inspection in accordance with Section 129.0761 shall be provided by the Engineer of Record as designated by the permittee.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§129.0761 Designation of Engineer of Record**

- (a) The permittee shall retain and designate an Engineer of Record for each area of technical expertise needed to provide professional inspection services as required by the City Engineer and described in the Land Development Manual.
- (b) If an Engineer of Record is changed, the work shall be stopped until the replacement Engineer has agreed in writing to accept responsibility as Engineer of Record. The permittee is responsible for notifying the City Engineer in writing of any change before work resumes.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*



**§129.0770 Completion of Work**

The permittee shall notify the City Engineer when the work is ready for final inspection. Final approval shall not be given until all work has been completed in accordance with the final approved plans and the as-built plans and *As-Graded Reports* have been submitted to and approved by the City Engineer in accordance with standards established in the Land Development Manual. If the work in the *public right-of-way* is a requirement for a Building Permit, the Certificate of Occupancy shall not be issued until the work is completed by the permittee and approved by the City.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*